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REMARKS

An Excess Claim Fee Payment Letter is submitted herewith to cover the cost of six (6) excess total claims.

Claims 1-26 are all of the claims presently pending in the present Application. Claims 1, 9 and 20 have been amended to more particularly define the claimed invention. Claims 21-26 have been added to claim additional features of the claimed invention..

It is noted that the claim amendments herein are made only for more particularly pointing out the invention, and not for distinguishing the invention over the prior art, narrowing the claims, or for any statutory requirements of patentability.

Further, it is noted that, notwithstanding any claim amendments made herein, Applicants' intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

Claims 1-3, 8-9, 14-15 and 17-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ma et al. (U.S. Patent No. 6,795,867). Claims 4-7, 10-13 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ma et al. in view of Mortself et al. (U.S. Patent No. 6,229,804).

These rejections are respectfully traversed in view of the following discussion.

I. THE CLAIMED INVENTION

The claimed invention (e.g., as recited in claim 1) is directed to a gatekeeper connected to an H323 network, including a first message receiving section which receives a gatekeeper discovery message from an end point, a transport data transmitting section, and a control section which upon the first message receiving section receiving the gatekeeper discovery message, refers to a load state list to determine, refers to a load state list to determine whether the gatekeeper has the lightest load among a plurality of gatekeepers including the gatekeeper, and controls the transport data transmitting section to transmit transport data to the end point in

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response to the gatekeeper discovery message, when it is determined that the gatekeeper has the lightest load.

In conventional networks, when a gatekeeper receives a gatekeeper discovery message from an end point, if the gatekeeper can register the data of the end point the gatekeeper sends back a registration possible message regardless of the condition of other gatekeepers. Thus, the load of a gatekeeper can become much heavier or much lighter than other gatekeepers in the network (Application at page 2, lines 1-16).

In the claimed invention, on the other hand, the gatekeepers do not necessarily have a dependency relationship (e.g., may operate independent of one another) but may share information (e.g., load stated information) with each other. Further, the gatekeepers may autonomously determine which of the gatekeepers has a lightest load.

In addition, the claimed invention includes a gatekeeper having a control section which upon the first message receiving section receiving the gatekeeper discovery message, refers to a load state list to determine whether the gatekeeper has the lightest load among a plurality of gatekeepers including the gatekeeper (Application at page 19, line 7-page 20, line 23). As a result, a load for an end point can be prevented from centering on a specific gatekeeper, and can be efficiently distributed among gatekeepers in the network (Application at page 20, line 24-page 21, line 3).

II. THE ALLEGED PRIOR ART REFERENCES

A. Ma

The Examiner alleges that Ma teaches the claimed invention of claims 1-3, 8-9, 14-15 and 17-20. Applicant submits, however, that there are elements of the claimed invention which are neither taught nor suggested by Ma.

Ma discloses a telephony system which allegedly manages gatekeeper load by redirecting calls from an assigned gatekeeper to a servicing gatekeeper during call setup. Specifically, the

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system includes a gatekeeper having a load management unit (LMU) which processes all setup messages. In particular, the LMU selects a gatekeeper in the network to setup and service the call and, based on the selection, either directs the assigned gatekeeper to setup and service the call or redirects the endpoint to a servicing gatekeeper (Ma at col. 2, lines 43-65).

However, contrary to the Examiner's allegations, Ma does not teach or suggest a control section which *"upon said first message receiving section receiving said gatekeeper discovery message, refers to a load state list to determine whether said gatekeeper has the lightest load among a plurality of gatekeepers including said gatekeeper"* as recited, for example, in claims 1 and 20 and similarly recited in claim 8. As noted above, this helps to prevent a load for an end point from centering on a specific gatekeeper, such that the load can be efficiently distributed among gatekeepers in the network (Application at page 20, line 24-page 21, line 3).

Clearly, these novel features are not taught or suggested by Ma. Indeed, the Examiner surprisingly attempts to allege on page 4 of the Office Action this feature is "inherent". This is completely unreasonable.

Specifically, the Examiner alleges that Ma teaches the LMU *"determines which Gatekeeper 108 or 109 will service the call ... based upon loading of the gatekeepers.... To enable this function, it is inherent in Ma that a memory/storage exists in LMU for holding and maintaining the current load information among a plurality of gatekeepers"*. This is clearly unreasonable.

First, Applicant would point out that the claimed invention does not necessarily include a memory/storage. Instead, an exemplary aspect of the claimed invention includes a control section which

Indeed, Applicant would respectfully submit that the Examiner has misapplied the concept of "inherency" in this instance. For example, where two compositions have the same ingredients, it may be considered "inherent" that the compositions have the same physical

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properties. However, it is not necessarily "inherent" that an LMU includes a memory/storage.

In fact, contrary to the Examiner's surprising assertion, it is clearly possible that the operations of Ma could be performed without including a memory/storage in the LMU. Indeed, it is possible to select a servicing gatekeeper based on loading without using some memory/storage in the LMU.

Further, Applicant would point out that the fact that a certain result or characteristic may occur or be present in the prior art is **not sufficient to establish the inherency** of that result or characteristic (MPEP 2112, citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). Further, in relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic **necessarily flows** from the teachings of the applied prior art. *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

In this case, the Examiner has clearly failed to show that the LMU **necessarily includes** some memory/storage as alleged by the Examiner. Therefore, the Examiner has failed to establish a memory/storage is inherent in the LMU in the Ma device.

Moreover, even assuming (*arguendo*) that a memory/storage is necessarily included and therefore inherent in the LMU, the claimed invention may not necessarily include a memory/storage, but instead includes a control section which may refer to a load state list. Nowhere does Ma even teach or suggest a "load state list" as in the claimed invention. Certainly, Ma does not teach or suggest that the LMU (which the Examiner attempts to equate with the control section of the claimed invention) refers to such a load state list. Indeed, the Examiner has not even attempted to identify where Ma teaches such a load state list.

Moreover, even assuming (*arguendo*) that a memory/storage is necessarily included and therefore inherent in the LMU, and even assuming (*arguendo*) that this memory/storage stores a "load state list", and even assuming (*arguendo*) that the LMU refers to this alleged "load state list", Applicant would point out that nowhere does Ma teach or suggest that the LMU refers to a

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load state list upon the first message receiving section receiving the gatekeeper discovery message. Indeed, Ma merely states that "[u]pon receipt of the setup message, the LMU ... determines which Gatekeeper 108 or 109 will service the call" (Ma at col. 6, lines 10-12). This is all that Ma says. Therefore, even assuming that the Examiner's allegations are all true, the Examiner has failed to assert that Ma teaches each and every feature of the claimed invention.

Therefore, Applicant submits that there are elements of the claimed invention that are not taught or suggested by Ma. Therefore, the Examiner is respectfully requested to withdraw this rejection.

B. Mortsol

The Examiner alleges that Ma would have been combined with Mortsol to form the invention of claims 4-7 and 10-13. Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention.

Mortsol discloses an election protocol for an Internet telephony system in one gatekeeper is elected to be an active gatekeeper. The system sorts the gatekeepers into a hierarchy with the highest ranked gatekeeper designated to respond to request messages, while the other gatekeepers stand by in idle mode and do not respond to gatekeeper requests (Mortsol at Abstract).

Applicant respectfully submits that these references would not have been combined as alleged by the Examiner. Indeed, these references are completely unrelated, and no person of ordinary skill in the art would have considered combining these disparate references, absent impermissible hindsight.

Specifically, in direct contrast to Mortsol which sorts the gatekeepers into a hierarchy with the highest ranked gatekeeper designated to respond to request messages, Ma merely teaches that a first gatekeeper may redirect a call to a second gatekeeper **based only on the load on the first gatekeeper**. Nowhere does Ma teach or suggest that the first gatekeeper considers

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whether the first gatekeeper has a greater load than the second gatekeeper. Indeed, nowhere does Ma even teach or suggest that the relative loads among the gatekeepers is ever considered in any context. Therefore, Ma is completely unrelated to Mortself.

Further, these references clearly do not teach or suggest their combination. Therefore, Applicant respectfully submits that one of ordinary skill in the art would not have been so motivated to combine the references as alleged by the Examiner. Therefore, the Examiner has failed to make a prima facie case of obviousness.

Moreover, neither Ma, nor Mortself, nor any alleged combination teaches or suggests a control section which *"upon said first message receiving section receiving said gatekeeper discovery message, refers to a load state list to determine whether said gatekeeper has the lightest load among a plurality of gatekeepers including said gatekeeper"* as recited, for example, in claims 1 and 20 and similarly recited in claim 8. As noted above, this helps to prevent a load for an end point from centering on a specific gatekeeper, such that the load can be efficiently distributed among gatekeepers in the network (Application at page 20, line 24-page 21, line 3).

Clearly, these novel features are not taught or suggested by Mortself. Indeed, the Examiner has not even alleged that this feature is taught or suggested by Mortself.

In fact, Mortself may teach storing a list in a memory of the Gatekeeper 20D (Mortself at col. 9, lines 30-31). However, the list is not a "load state list" as in the claimed invention. Instead, the list in Mortself is an "alternate gatekeeper list" which is sent to an initiating Gateway/Terminal 16A (Mortself at col. 9, lines 24-28). Moreover, even assuming (arguendo) that this list may be equated with a "load state list", nowhere does Mortself teach or suggest a control section which *upon a first message receiving section receiving a gatekeeper discovery message, refers to the alternate gatekeeper list*. In fact, the Examiner does not even attempt to identify a "control section" in Mortself, let alone identify where a control section refers to the alternate gatekeeper list upon receiving a gatekeeper discovery message.

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Moreover, even assuming (arguendo) that Mortsof teaches a control section that refers to the alternate gatekeeper list upon receiving a gatekeeper discovery message, nowhere does Mortsof teach or suggest that the control section refers to the list to **determine whether the gatekeeper has the lightest load among a plurality of gatekeepers**. Indeed, nowhere does Mortsof even teach or suggest that a gatekeeper determines whether it **has the lightest load**. Therefore, Mortsof clearly does not make up for the deficiencies of Ma.

Therefore, Applicant submits, however, that these references would not have been combined and even if combined, the combination would not teach or suggest each and every element of the claimed invention. Therefore, the Examiner is respectfully requested to withdraw this rejection.

III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-26, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

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The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Response was filed by facsimile with the United States Patent and Trademark Office, Examiner Donald L. Mills, Group Art Unit # 2662 at fax number 571-273-8300 this 31st day of May, 2006.



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